

Message Text

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ACTION EB-07

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E.O. 11652: GDS

TAGS: EEWT, RO

SUBJ: US-ROMANIAN TRADE AGREEMENT. ROMANIAN SAFEGUARD
PROPOSALS

REF: BUCHAREST 0161 (NOTAL)

1. SUMMARY. THIS MESSAGE TRANSMITS ROMANIAN SAFEGUARD
PROPOSALS (ARTICLE III AND ANNEX 1 OF US DRAFT AGREEMENT)
AND OUR INITIAL REACTION TO THEM. REQUEST IMMEDIATE
GUIDANCE. END SUMMARY.

2. DURING JANUARY 15 AFTERNOON SESSION ROMANIAN SIDE
SUBMITTED FOLLOWING ALTERNATIVE PROPOSAL TO US DRAFT
ARTICLE III AND ANNEX I:

BEGIN TEXT

ARTICLE III: SAFEGUARDS:
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1. THE PARTIES AGREE TO CONSULT PROMPTLY AT THE REQUEST OF EITHER PARTY SHOULD IT DETERMINE THAT ACTUAL OR PROSPECTIVE IMPORTS OF A PRODUCT ORIGINATING IN THE TERRITORY OF THE OTHER PARTY ARE CAUSING OR THREATEN TO CAUSE, OR ARE SIGNIFICANTLY CONTRIBUTION TO, MARKET DISRUPTION WITHIN A DOMESTIC INDUSTRY OF THE REQUESTING PARTY.

2. EITHER PARTY MAY IMPOSE SUCH RESTRICTIONS AS IT DEEMS APPROPRIATE ON IMPORTS ORIGINATING IN THE TERRITORY OF THE OTHER PARTY TO PREVENT OR REMEDY SUCH ACTUAL OR THREATENED MARKET DISRUPTION.

3. THE MODALITIES FOR THE APPLICATION OF THE PRESENT ARTICLE ARE SET FORTH IN ANNEX I.

A N N E X I

1/A) THE CONSULTATIONS PROVIDED FOR UNDER ARTICLE III IN ORDER TO DEMONSTRATE THE EXISTENCE OF A MARKET DISRUPTION SIUTATION SHALL PROVIDE FOR A REVIEW OF THE PRODUCTION, MARKET AND TRADE SITUATION OF THE INDUSTRY AND PRODUCT INVOLVED (INCLUDING TURNOVER, MARKET SHARE PROFITS, WAGES, EXPORT PERFORMANCE, VOLUME AND OTHER DATA CONCERNING THE DISRUPTIVE IMPORTS AND OF IMPORTS OF SAME OR LIKE PRODUCT FROM ALL OTHER COUNTRIES, PRODUCTION, PRODUCTIVITY, UTILIZATION OF CAPACITY, INVESTMENTS, CHANGES IN TECHNOLOGY AND CONSUMER PREFERENCES).

SUCH CONSULTATIONS SHALL BE CONCLUDED WITHIN SIXTY DAYS OF THE REQUEST UNLESS OTHERWISE AGREED DURING THE COURSE OF SUCH CONSULTATIONS.

1/B) IF DURING CONSULTATIONS AGREEMENT CONCERNING THE SOLUTION OF THE ALLEGED MARKET DISRUPTION SITUATION IS NOT REACHED, THE IMPORTING PARTY INTENDING TO INTRODUCE QUANTITATIVE IMPORT LIMITATIONS OR OTHER RESTRICTIONS SHALL BE FREE TO DO SO. IF AN EMERGENCY SITUATION IS DETERMINED TO EXIST, THE INTENDED RESTRICTIONS MIGHT BE PUT INTO EFFECT PRIOR TO THE CONCLUSION OF THE CONSULTATIONS.

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1/C) IF AT THE CONCLUSION OF THE CONSULTATIONS OR PRIOR TO IT, SUCH RESTRICTIVE ACTION AS MENTIONED IN PARA 1/B ABOVE IS TAKEN, NEW CONCESSIONS SHOULD BE GRANTED TO THE PARTY WHOSE PRODUCTS ARE AFFECTED BSGSUCH RESTRICTION IN ORDER TO MAINTAIN THE GENERAL LEVEL OF RECIPROCAL CONCESSIONS. IF SUCH CONCESSIONS ARE NOT GRANTED, THE EXPORTING PARTY IS FREE TO SUSPEND THE APPLICATION TO THE TRADE OF THE PARTY TAKING SUCH ACTION OF SUBSTANTIALLY EQUIVALENT CONCESSIONS

OR FACILITIES.

1/D) IN CARRYING OUT THE CONSULTATIONS, AS WELL AS IN ADOPTING RESTRICTIVE MEASURES, DUE ACCOUNT SHALL BE TAKEN OF THE INTERESTS OF THE EXPORTING COUNTRY, ITS LEVEL OF DEVELOPMENT, THE IMPORTANCE OF THE RESPECTIVE INDUSTRY TO ITS ECONOMY, ITS OVERALL BALANCE OF PAYMENTS AND THE TRADE BALANCE WITH THE IMPORTING COUNTRY AS WELL AS OF ANY CONTRACTS BETWEEN NATIONALS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE TWO PARTIES CONCLUDED PRIOR TO THE REQUEST FOR CONSULTATIONS.
END TEXT

3. THESE PROPOSALS HAVE NOT YET BEEN DISCUSSED IN THE NEGOTIATIONS. OUR INITIAL REACTION TO THESE TEXTS IS AS FOLLOWS:

ARTICLE III IS SATISFACTORY, AND ANNEX I OFFERS A BASIS FOR FURTHER NEGOTIATION.

4. ANNEX I, 1/A REPRESENTS AN EFFORT TO CLARIFY FACTORS TO BE TAKEN INTO ACCOUNT IN DETERMINING WHETHER SAFEGUARDS WOULD BE INVOKED AND REFLECTS ROMANIAN POSITION THAT LANGUAGE IN US DRAFT PERMITS TOO MUCH DISCRETION.

A. WE BELIEVE PHRASE QUOTE IN ORDER TO DEMONSTRATE THE EXISTENCE OF A MARKET DISRUPTION SITUATION END QUOTE TOTALLY UNACCEPTABLE AND NOT SUBJECT TO NEGOTIATION. SUGGEST FOR WASHINGTON CONSIDERATION POSSIBLE MODIFICATION OF PARENTHETICAL PHRASE TO READ QUOTE INCLUDING TRENDS IN DOMESTIC PRODUCTION, PROFITS OF FIRMS WITHIN THE INDUSTRY, UNEMPLOYMENT, AND UNDER-EMPLOYMENT, SALES, INVENTORIES, RATES OF INCREASE OF IMPORTS FROM COUNTRY IN QUESTION, MARKET SHARE AND ABSOLUTE LEVEL OF SUCH IMPORTS END QUOTE. NOTE SECTION 201 (B) (2).
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B. SENTENCE BEGINNING QUOTE SUCH CONSULTATIONS END QUOTE SATISFACTORY. BELIEVE FINAL SENTENCE IN US DRAFT PARA 1(A) BEGINNING QUOTE BOTH PARTIES END QUOTE SHOULD BE RETAINED.

5. 1/B. APPEARS SATISFACTORY IF QUOTE MIGHT END QUOTE IS REPLACED WITH QUOTE MAY END QUOTE IN FINAL CLAUSE.

6. 1/C. FIRST SENTENCE OBVIOUSLY UNACCEPTABLE. SECOND SENTENCE REFLECTS SECOND SENTENCE OF 4D OF ROMANIAN ACCESSION PROTOCOL AND GATT ARTICLE XIX 3(A).

7. 1/D. TOTALLY UNACCEPTABLE.

8. WE ALSO NOTE THAT ROMANIAN DRAFT DOES NOT CONTAIN COUNTERPART

TO OUR PARAGRAPH 2. IN VIEW OF ROMANIANS STATED INTEREST IN MORE PRECISE STANDARDS FOR EXERCISE OF SAFEGUARDS, IT MAY BE ADVANTAGEOUS TO PROPOSE A NEW PARA DEFINING QUOTE MARKET DISRUPTION END QUOTE, TRACKING LANGUAGE OF SECTION 406(E)(2).

9. PLAN TO LIMIT INITIAL RESPONSE TO ROMANIANS JANUARY 16 TO OBJECTIONS TO PROVISIONS OBVIOUSLY UNACCEPTABLE. REQUEST IMMEDIATE GUIDANCE ON FURTHER HANDLING OF THESE MATTERS, INCLUDING POSSIBLE FALLBACK POSITIONS.
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